

# THE CORPORATION JOURNAL

(REGISTERED U. S. PAT. OFFICE)

VOL. XVI, No. 6

MARCH, 1944  
COMPLETE NUMBER 307

PAGES 121-140

Published by

THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

*In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.*

Government Contracts—Necessity of Qualification . . . 123

## Recent Decisions

Connecticut—Franchise Tax—interstate commerce . . . 128

Georgia—Property taxes—situs of credits . . . . . 129

Illinois—Foreign bank—doing trust business . . . . . 127

Kentucky—Directors—holding stock as nominees . . . 124

Michigan—1941 Escheat Law amendment valid . . . . . 124

New Jersey—Recapitalization—accumulated dividends 125

New York—Directors—excessive salaries . . . . . 126

—Foreign corporations—merger—damages . . . . . 128

—Suit—merger of two foreign companies . . . . . 127

Ohio—Property taxes—district office credits . . . . . 129

Tennessee—Agreement—majority stock—equity suit . 126

Appealed to The Supreme Court . . . . . 133

Regulations and Rulings . . . . . 134

Some Important Matters for March and April . . . . . 135

## Are you treating your stockholders fairly?

Your company's stock books are important evidence for your stockholders of the title to their stock, date of its acquisition, etc. In settling an estate, or in litigation, or in tax disputes (to cite a few instances) that evidence may be badly needed.

Is the condition of *your* stock books such as a stockholder would be satisfied with if he needed them for supporting evidence and such as you would be proud of if a critical official eye examined them?

Corporation officials who have appointed a Transfer Agent like The Corporation Trust Company don't have to worry about their stock records. They know the spotlight will find them at any moment clear, complete, up-to-date.

### **CORPORATION TRUST**

The Corporation Trust Company  
C T Corporation System  
And Associated Companies

Albany 1 . . . . .	158 State Street	Jersey City 2 . . . . .	15 Exchange Place
Atlanta 3 . . . . .	57 Forsyth Street, N. W.	Los Angeles 13 . . . . .	510 S. Spring Street
Baltimore 2 . . . . .	10 Light Street	Minneapolis 1 . . . . .	409 Second Ave. S.
Boston 9 . . . . .	10 Post Office Square	New York 5 . . . . .	120 Broadway
Buffalo 3 . . . . .	295 Main Street	Philadelphia 9 . . . . .	123 S. Broad Street
Chicago 4 . . . . .	208 S. La Salle Street	Pittsburgh 22 . . . . .	535 Smithfield Street
Cincinnati 2 . . . . .	441 Vine Street	Portland, Me. 3 . . . . .	57 Exchange Street
Cleveland 14 . . . . .	925 Euclid Avenue	San Francisco 4 . . . . .	220 Montgomery St.
Dallas 1 . . . . .	1309 Main Street	Seattle 4 . . . . .	1004 Second Avenue
Detroit 26 . . . . .	719 Griswold Street	St. Louis 2 . . . . .	314 North Broadway
Dover, Del. . . . .	30 Dover Green	Washington 4 . . . . .	1329 E. St. N. W.
Hartford 3 . . . . .	90 State Street	Wilmington 99 . . . . .	100 West 10th St.

# Foreign Corporations

## Government Contracts—Necessity of Qualification

Where a corporation is about to fulfill the terms of a contract with the Federal Government which required it to be active in a state in which it is not authorized to do business, a question is immediately raised as to the necessity of obtaining a license to do business in that state as a foreign corporation.

In an Arkansas decision rendered in 1941, a foreign corporation constructing a levee in Arkansas under a contract with the United States without being licensed to do business under the applicable statutes, when proceeded against for a penalty of \$1,000 for such failure, contended that the statutes requiring qualification had no application to it because it was "working under employment of the Federal Government in the State of Arkansas." The Supreme Court of Arkansas overruled this contention and affirmed a judgment for the penalty, ruling there could be no doubt the company was an independent contractor and not a government instrumentality. The Supreme Court of the United States dismissed an

appeal in this case for want of a substantial Federal question.<sup>1</sup>

Attorneys General in at least five states have rendered opinions to the same general effect that a corporation is "doing business" within their states, under similar circumstances, so as to be required to be licensed as a foreign corporation. These states are Alabama, Kentucky, Oregon, Tennessee and Utah.<sup>2</sup>

There are a number of decisions in which it has been indicated also that the mere fact that a foreign corporation is operating within a state under a contract with the Federal Government will not have the effect of exempting it from state taxation.<sup>3</sup> In one of these, the Supreme Court of the United States said:

"It seems to us extravagant to say that an independent private corporation for gain, created by a State, is exempt from state taxation, either in its corporate person, or its property, because it is employed by the United States, even if the work for which it is employed is important and takes much of its time."<sup>4</sup>

<sup>1</sup> *E. E. Morgan Co., Inc. v. State for Use and Benefit of Phillips County*, 150 U. S. W. 2d 736; appeal dismissed for want of a substantial Federal question, 314 U. S. 571, rehearing denied, 314 U. S. 711. (The Corporation Journal, October, 1941, page 10.)

<sup>2</sup> Alabama CT (Corporation Tax) Service, ¶.403; Kentucky CT Service, ¶.01113; Oregon CT, ¶.0143; Tennessee CT, ¶.012; Utah CT, ¶.410.

<sup>3</sup> *James v. Dravo Contracting Company*, 302 U. S. 134; *Baltimore Shipbuilding and Dry Dock Company v. Baltimore*, 195 U. S. 375; *Ranier National Park Co. v. Henneford et al.*, 45 P. 2d 617, certiorari denied, 296 U. S. 647; *Ranier National Park Co. v. Martin et al.*, 18 F. Supp. 481, affirmed, 302 U. S. 661.

<sup>4</sup> *Baltimore Shipbuilding and Dry Dock Company v. Baltimore*, 195 U. S. 375.

## Are you treating your stockholders fairly?

Your company's stock books are important evidence for your stockholders of the title to their stock, date of its acquisition, etc. In settling an estate, or in litigation, or in tax disputes (to cite a few instances) that evidence may be badly needed.

Is the condition of *your* stock books such as a stockholder would be satisfied with if he needed them for supporting evidence and such as you would be proud of if a critical official eye examined them?

Corporation officials who have appointed a Transfer Agent like The Corporation Trust Company don't have to worry about their stock records. They know the spotlight will find them at any moment clear, complete, up-to-date.

### **CORPORATION TRUST**

The Corporation Trust Company  
C T Corporation System  
And Associated Companies

Albany 1 . . . 158 State Street  
Atlanta 3 . . . 57 Forsyth Street, N. W.  
Baltimore 2 . . . 10 Light Street  
Boston 9 . . . 10 Post Office Square  
Buffalo 3 . . . 295 Main Street  
Chicago 4 . . . 208 S. La Salle Street  
Cincinnati 2 . . . 441 Vine Street  
Cleveland 14 . . . 925 Euclid Avenue  
Dallas 1 . . . 1309 Main Street  
Detroit 26 . . . 719 Griswold Street  
Dover, Del. . . . 39 Dover Green  
Hartford 3 . . . . 50 State Street

Jersey City 2 . . . 15 Exchange Place  
Los Angeles 13 . . . 510 S. Spring Street  
Minneapolis 1 . . . 409 Second Ave. S.  
New York 5 . . . . 120 Broadway  
Philadelphia 9 . . . 123 S. Broad Street  
Pittsburgh 22 . . . 535 Smithfield Street  
Portland, Me. 3 . . . 57 Exchange Street  
San Francisco 4 . . . 229 Montgomery St.  
Seattle 4 . . . . 1004 Second Avenue  
St. Louis 2 . . . . 314 North Broadway  
Washington 4 . . . 1329 E. St. N.W.  
Wilmington 99 . . . 100 West 10th St.

# Foreign Corporations

## Government Contracts—Necessity of Qualification

Where a corporation is about to fulfill the terms of a contract with the Federal Government which required it to be active in a state in which it is not authorized to do business, a question is immediately raised as to the necessity of obtaining a license to do business in that state as a foreign corporation.

In an Arkansas decision rendered in 1941, a foreign corporation constructing a levee in Arkansas under a contract with the United States without being licensed to do business under the applicable statutes, when proceeded against for a penalty of \$1,000 for such failure, contended that the statutes requiring qualification had no application to it because it was "working under employment of the Federal Government in the State of Arkansas." The Supreme Court of Arkansas overruled this contention and affirmed a judgment for the penalty, ruling there could be no doubt the company was an independent contractor and not a government instrumentality. The Supreme Court of the United States dismissed an

appeal in this case for want of a substantial Federal question.<sup>1</sup>

Attorneys General in at least five states have rendered opinions to the same general effect that a corporation is "doing business" within their states, under similar circumstances, so as to be required to be licensed as a foreign corporation. These states are Alabama, Kentucky, Oregon, Tennessee and Utah.<sup>2</sup>

There are a number of decisions in which it has been indicated also that the mere fact that a foreign corporation is operating within a state under a contract with the Federal Government will not have the effect of exempting it from state taxation.<sup>3</sup> In one of these, the Supreme Court of the United States said:

"It seems to us extravagant to say that an independent private corporation for gain, created by a State, is exempt from state taxation, either in its corporate person, or its property, because it is employed by the United States, even if the work for which it is employed is important and takes much of its time."<sup>4</sup>

<sup>1</sup> *E. E. Morgan Co., Inc. v. State for Use and Benefit of Phillips County*, 150 S. W. 2d 736; appeal dismissed for want of a substantial Federal question, 314 U. S. 571, rehearing denied, 314 U. S. 711. (The Corporation Journal, October, 1941, page 10.)

<sup>2</sup> Alabama CT (Corporation Tax) Service, ¶.403; Kentucky CT Service, ¶.01113; Oregon CT, ¶.0143; Tennessee CT, ¶.012; Utah CT, ¶.410.

<sup>3</sup> *James v. Dravo Contracting Company*, 302 U. S. 134; *Baltimore Shipbuilding and Dry Dock Company v. Baltimore*, 195 U. S. 375; *Ranier National Park Co. v. Henneford et al.*, 45 P. 2d 617, certiorari denied, 296 U. S. 647; *Ranier National Park Co. v. Martin et al.*, 18 F. Supp. 481, affirmed, 302 U. S. 661.

<sup>4</sup> *Baltimore Shipbuilding and Dry Dock Company v. Baltimore*, 195 U. S. 375.

## Domestic Corporations

### Kentucky.

Directors' holding of stock as nominee of corporate stockholder upheld in absence of claim of improper purpose. Plaintiffs below, common stockholders in defendant company, sought a declaration of rights favorable to them as minority stockholders and for injunctive relief. The company had 2,000 shares of common and 3,500 shares of 5% cumulative preferred stock, the par value of each class being \$100. Under its charter the preferred stockholders had the same voting powers as common stockholders in the event of nonpayment of two semi-annual dividends, which condition existed. Three of the directors were officers of railroad companies, which owned all of the preferred and much of the common stock of defendant. Plaintiffs alleged they were disqualified from acting as directors because they did not in fact own any stock in the corporation, their stock having been transferred to them only for the purpose of qualification and with the power of attorney for re-transfer appearing in the certificates simultaneously endorsed in blank and immediately delivered to the railroad companies. Two of seven directors having resigned and there being only two directors who personally owned shares in defendant, plaintiffs charged there were only two genuine directors and that there was not a quorum of eligible directors for the transaction of business. There being no claim of an improper purpose in the method of stockholding by the three directors, the Court of Appeals of Kentucky found no reason to take exception to it. The action also involved the sale by the directors of virtually the entire assets of the corporation and the action of the majority of the stockholders in consenting, in writing that the corporation be dissolved, plaintiffs seeking to enjoin the liquidation of the company, to prevent the sale and to have a receiver appointed. The court, however, finding plaintiffs' allegations insufficient to warrant it in interfering with the management of the corporate affairs, affirmed a judgment in favor of the defendants. *Kaye et al. v. Kentucky Public Elevator Co. et al.*, 175 S. W. 2d 142. Commerce Clearing House Court Decisions Requisition No. 311098. J. Verser Conner of Louisville, for appellants. Woodward, Dawson & Hobson, Dodd & Dodd and Edward P. Humphrey of Louisville, for appellees.

### Michigan.

1941 Act amending State Escheat Law held valid. Recently, the Michigan Supreme Court had before it an appeal in which the plaintiffs, who were "depositories" under Sec. 4b of Act 170, Pub. Acts 1941, which amended the Escheat Law, sought to have this act held unconstitutional and to restrain the defendant State Board of Escheats from enforcing it. The court, after a careful examination of the statute, came to the conclusion that "Act 170 is not violative of section 21 of article 5 of the Michigan Constitution of 1908, or the

due process clauses of the State and United States Constitutions." *Evans Products Company et al. v. Fry et al.*, Michigan Supreme Court, December 29, 1943. Commerce Clearing House Court Decisions Requisition No. 313829; 12 N. W. 2d 446.

### New Jersey.

Mandatory recapitalization plan, involving the elimination of arrearages of dividends on cumulative preferred stock of complainants, held invalid as to them, as wiping out a vested right. Complainants, as owners of shares of 8% cumulative preferred stock of defendant New Jersey corporation, on which dividends were in arrear to the extent of \$112 a share, sought to restrain defendant company from filing a proposed amendment to its certificate of incorporation giving effect to a proposed plan of recapitalization on the ground that the plan was inequitable and illegal as to them. Approximately 75% of each of the common and preferred stockholders had voted in favor of the plan, which was compulsory and called for the conversion of the preferred stock, with all arrearages thereon, by giving each of those shares a \$40 principal amount 5% twelve year debenture and 14 shares of new \$5 par value capital stock and for the conversion of each share of outstanding common into 2/5 share of such new \$5 par value stock. The Chancery Court restrained defendant from executing and filing any amendment to its certificate of incorporation putting the proposed plan into effect, concluding that the plan was illegal and invalid against complainants, observing that defendant's powers did not include "the right to destroy the cumulative portion of the contract held by preferred stockholders to be paid their dividend arrears now, or at some future time," nor did defendant have the power "to fund or satisfy those rights of complainants as preferred stockholders in respect to dividends in arrear, by issuing common stock therefor, or otherwise (even though complainants acquired their stock after the passage of the amendment of 1926), and thus wipe out a vested right in the nature of a debt owing to complainants," the court placing emphasis upon the mandatory nature of the plan. The court pointed out that it was distinguishable "from those reported cases which deal with a plan of merger or consolidation, wherein a change is proposed in preferred stock which includes the elimination of dividend arrearages thereon. In cases of merger or consolidation the terms proposed are not mandatory but preferred stockholders have the right to decline the offered terms and have their stock appraised and to receive cash in payment therefor." *Wessel et al. v. Guantanamo Sugar Co.*, Court of Chancery, January 3, 1944. Commerce Clearing House Court Decisions Requisition No. 314792; 35 A. 2d 215. Milton, McNulty & Augelli (Joseph Keane, of counsel), of Jersey City, for complainants Wessel et al. Carpenter, Gilmour & Dwyer (Charles B. Collins of Jersey City and Archie S. Carp of New York, of counsel), of Jersey City, for complainants Murphy et al. Pitney, Hardin & Ward (Waldron M. Ward, of counsel), of Newark, for defendant.



## New York.

Complaint, alleging combination of directors to vote themselves lucrative corporate positions with excessive salaries, found not to state a cause of action. The Court of Appeals of New York recently indicated that allegations such as the following were, standing alone, insufficient to constitute a cause of action in a stockholders' derivative suit: Allegations that defendant directors combined their common voting strength as directors to cause the appointment of nearly all of them to lucrative corporate positions; that the compensation so received was excessive and disproportionate to the services rendered therefor and were not fixed or paid in the best interests of the corporate defendant. The court regarded the complaint before it as containing no allegations which would permit proof to support a finding against any defendant named in the complaint to compel the restoration of corporate funds. A judgment granting a motion for a dismissal of the complaint was affirmed. *Oshrin v. Celanese Corporation of America et al.*, 291 N. Y. 170, 51 N. E. 2d 694. Louis Susman of New York City, for appellant. Samuel Gottlieb, I. Gainsburg and Robert Nias West of New York City, for respondent. (Note: Another decision by the Court of Appeals, decided the same day, involving similar allegations is *Kalmanish v. Smith et al.*, 291 N. Y. 142, 51 N. E. 2d 681.)

## Tennessee.

State Supreme Court affirms decision holding stockholder breaching agreement, which prohibited it from acquiring majority stock in corporation, to be without standing in equity to complain against issuance of additional stock to the other parties to the agreement designed to restore the original balance. In *Heylandt Sales Company v. Welding Gas Products Co. et al.*, decided by the Tennessee Court of Appeals, November 27, 1942, (The Corporation Journal, April, 1943, page 372), the individual defendants were the organizers of defendant corporation. Certain competitors of the defendant company, of which complainant was one, also owned stock in defendant company. The individual defendants, fearing that these competing interests might absorb theirs, had an agreement with a representative of the competitors under which the competitors were never to acquire more than 46 per cent of defendant's stock. This agreement was breached by complainant, who eventually acquired 786 shares out of 1,320 shares outstanding. There being 580 shares remaining unissued out of 2,000 shares authorized, defendants issued these shares to themselves with the consent of all stockholders except the complainant. This act was complained of by the complainant as violating its preemptive rights, in a chancery suit, in which the Chancellor decreed a cancellation of these shares. Upon appeal, the Court of Appeals of Tennessee reversed this decree and denied the relief sought. Upon a further appeal, the Supreme Court of Tennessee has affirmed the judgment of the Court of Appeals, with the observation that the



distribution of the stock in the proportion originally contemplated and agreed upon by the parties had been restored and that "no wrong has resulted which equity may be called upon to right." *Heylandt Sales Co. v. Welding Gas Products Co. et al.*, 175 S. W. 2d 557. Williams & Frierson of Chattanooga, for complainant. Jac Chambliss, W. G. Brown and R. N. Chambliss (Sizer, Chambliss & Kefauver, of counsel), of Chattanooga, for defendants.

## Foreign Corporations

### Illinois.

Foreign national bank denied right to qualify to do business in state. "This is an original proceeding in mandamus brought by the Boatmen's National Bank of St. Louis against the State Auditor and the Secretary of State seeking to compel the acceptance of petitioner's application for and the issuance of a certificate permitting it to do a trust business in Illinois. The prayer for the writ is in the alternative: first, to compel the Auditor to receive and examine the application of petitioner for a certificate permitting the doing of a trust business, and second, if the court is of the opinion that a certificate to the petitioner to do business in Illinois be first obtained from the Secretary of State, that the Secretary of State be compelled to grant such a certificate." The Illinois Supreme Court denied the writ, basing its ruling upon an apparent limitation contained in Section 11(k) of the Federal Reserve Act restricting trust business of national banks to the state in which the national bank is authorized to do business and a prohibition contained in the general Banking Act of Illinois that "no bank shall establish or maintain in this or any other state or country any branch bank, nor shall it establish or maintain in this state any branch office or additional office or agency for the purpose of conducting any of its business." (Ill. Rev. Stat. 1941, chap. 16½, par. 9.) *Boatmen's National Bank of St. Louis v. Hughes, Secretary of State, et al.*, Illinois Supreme Court, January 19, 1944. Commerce Clearing House Court Decisions Requisition No. 315188.

### New York.

Court refuses to take jurisdiction in suit involving merger of two corporations of another state. The Supreme Court, Special Term, New York City, granted a motion to dismiss the complaint in an action by the stockholders of a Delaware company to determine the validity and effect of the merger of that company with another Delaware company, remarking: "If this court should take jurisdiction, the sole question involved would be with reference to the validity and effect of the merger under the laws of Delaware and it would be incongruous and unbecoming for courts of this state to undertake a pronouncement with reference to such validity and effect when plaintiffs are voluntary investors in the stock of a Delaware corporation and have a complete remedy in the courts of that state." *Lang-*

*felder et al. v. Universal Laboratories, Inc.*, 45 N. Y. S. 2d 19. Charles Rosenbaum of New York City, for plaintiffs. White & Case (Orison S. Marden, of counsel), of New York City, for defendant.

Dissenting stockholders' suit against directors of Virginia corporation for damages to value of stock resulting from merger effected by defendants with another corporation, ruled not barred by Virginia statute giving right of appraisal. Plaintiffs as stockholders of a Virginia corporation sought, in a New York Federal court, to recover damages to the value of the stock of their corporation alleged to have resulted from a merger of the corporation with another corporation brought about by individual defendants who were directors of the corporation. Certain of the defendants moved for an order dismissing the complaint and directing summary judgment for defendants, alleging plaintiffs had had an exclusive remedy of appraisal as dissenting stockholders under Section 3822 of the Virginia General Corporation Law and failure to exercise it was a bar to the suit. The United States District Court, S. D., New York, observed that "whether this Virginia statute is exclusive is a matter for determination by the Virginia courts," and, after an examination of pertinent Virginia decisions, concluded that the provisions were not exclusive and did not constitute a bar to this action. The defendants' motion was therefore denied. *Weiss et al. v. Atkins et al.*, 52 F. Supp. 418. Schwartz & Frohlich (Herbert P. Jacoby, of counsel), of New York City, for plaintiffs. Donovan, Leisure, Newton & Lumbard (Jerome H. Doran, of counsel), of New York City, for defendants Joseph P. Routh and others.

## Taxation

### Connecticut.

Circuit Court of Appeals holds franchise tax based on income applicable to a foreign trucking company, engaged in interstate commerce, not fully authorized to do intrastate business in state. In *Spector Motor Service, Inc. v. McLaughlin, Tax Commissioner*, 47 F. Supp. 671, (The Corporation Journal, April, 1943, page 378), the United States District Court, District of Connecticut, enjoined the defendant tax Commissioner from collecting a tax under the Corporation Business Tax Act of 1935 from the plaintiff Missouri Motor Transport Company. Although engaged in the motor transportation of goods between points in the Midwest and in the Northeast, plaintiff did not engage in any hauls which both originated and terminated in Connecticut, all of its business being in interstate commerce. The corporation had registered as a foreign corporation in Connecticut and paid the minimum license fee. It had not, however, qualified with the Public Utilities Commission of Connecticut to operate as an intrastate carrier and thus had no right to engage in intrastate business in the state. The District Court viewed the tax as a tax upon the exercise of a franchise to carry on intrastate commerce in the state

and as not applying to foreign corporations which, during the taxable year, did not carry on, and had no right to exercise the privilege of carrying on or doing, intrastate business in the state. Upon appeal, the United States Circuit Court of Appeals, Second Circuit, writing a lengthy opinion, reversed the judgment of the lower court and upheld the levy of the tax, concluding that "the levy upon the plaintiff is only of a nondiscriminatory tax upon income fairly attributable to interstate business in this state and that as such it is not prohibited under the commerce clause of the United States Constitution." *Spector Motor Service, Inc. v. Walsh*,\* United States Circuit Court of Appeals, Second Circuit, December 24, 1943. Commerce Clearing House Court Decisions Requisition No. 313868. Leo V. Gaffney, Asst. Attorney General, (Francis A. Pallotti, Atty. General, on the brief), for defendant appellant. Cyril Coleman of Hartford (Israel Nair and Nair & Nair of New Britain and Day, Berry & Howard of Hartford, on the brief), for plaintiff-appellee.

---

\* The full text of this opinion is printed in **The Corporation Tax Service**, Connecticut, page 284.

#### Georgia.

Credits of foreign corporation, arising from sales effected through local office, held to have a taxable situs in state for property tax purposes. Plaintiff foreign corporation sought to enjoin the Tax Assessor of Fulton County and others from collecting property taxes upon credits represented by accounts receivable arising in favor of the company through sales of merchandise made to customers in the county and elsewhere on open account on solicitations by salesmen operating out of plaintiff's Atlanta sales office in that county. The Supreme Court of Georgia found that the company was doing business in Fulton County, and held that such intangibles had a tax situs there and that the county could legally assess them for taxation. The action of the lower court in refusing to grant an injunction was affirmed. *Colgate-Palmolive-Peet Co. v. Davis, Tax Assessor et al.*,\* 27 S. E. 2d 326. Robt. H. Jones and Grover Middlebrooks of Atlanta, for plaintiff in error. W. S. Northcutt, E. H. Sheats and Standish Thompson of Atlanta, for defendants in error.

---

\* The full text of this opinion is printed in **The Corporation Tax Service**, Georgia, page 2260.

#### Ohio.

Accounts receivable related to district offices of an Ohio corporation located in other states and used in the conduct of the activities of those offices, held exempt from property taxation in Ohio. Tax assessments were made for the years 1939 and 1940 against the appellee which included accounts receivable and credits of the several district offices, located outside Ohio, of a subsidiary company of the appellee. The Tax Commissioner assigned an Ohio situs to all such

# Modern technique for the modern lawyer--

## ***CORPORATION TRUST***

The Corporation Trust Company  
CT Corporation System  
And Associated Companies

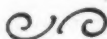
Albany 1.....158 State Street  
Atlanta 3.....57 Forsyth Street, N. W.  
Baltimore 2.....10 Light Street  
Boston 9.....10 Post Office Square  
Buffalo 3.....295 Main Street  
Chicago 4.....208 S. La Salle Street  
Cincinnati 2.....441 Vine Street  
Cleveland 14.....925 Euclid Avenue  
Dallas 1.....1309 Main Street  
Detroit 26.....719 Griswold Street  
Dover, Del.....30 Dover Green  
Hartford 3.....50 State Street

Jersey City 2.....15 Exchange Place  
Los Angeles 13.....510 S. Spring Street  
Minneapolis 1.....409 Second Avenue S.  
New York 5.....120 Broadway  
Philadelphia 9.....123 S. Broad Street  
Pittsburgh 22.....535 Smithfield Street  
Portland, Me. 3.....57 Exchange Street  
San Francisco 4.....220 Montgomery St.  
Seattle 4.....1004 Second Avenue  
St. Louis 2.....314 North Broadway  
Washington 4.....1329 E. St. N. W.  
Wilmington 99.....100 West 10th Street

When a client's new venture, or expansion of present facilities, makes advisable a new corporation in some outside state, or requires qualification in one or more states—then is when the Corporation Trust services are a friend indeed for the corporation lawyer: Corporate name verified for you; copy of statute under which it must organize or full text of foreign corporation requirements; official information as to fees, taxes, and necessary filings and recordings; official forms—and when papers are ready, all the details of filing and recording performed for you with precision and dispatch; and thereafter statutory office and agent established and maintained for you. Telephone or write the nearest C T office—see list at left—and a trained, experienced C T man will set the services of this continent-wide organization at work for you.

items for the purpose of taxation. Pertinent portions of the stipulation of facts were summarized as follows: "Each of the appellee's district offices outside Ohio is in charge of a district manager who performs all administrative duties connected with the office. He supervises the selling and delivery of merchandise and makes collection therefor. He employs and discharges the employees connected with his office, and they are responsible to him. The district offices deposit the checks and money received in payment on their accounts receivable, in bank accounts in the district office cities. District managers have authority to accept drafts on the local bank accounts comprising such deposits, and apply these deposits in payment of the needs of their offices, including wages and salaries of employees, rent, warehouse and trucking charges, etc. All expenses of the district offices are paid by the district managers or under their direction. Checks covering such expenses are drawn on the local banks where the district offices are located, and are then forwarded to Cincinnati to be signed by the company treasurer. After being signed, the checks are sent to the payees. Deposits in the local banks are not withdrawn to Ohio until the expenses and needs of the district offices are first satisfied." In affirming a judgment of the Board of Tax Appeals holding that such intangibles were exempt under sections 5328-1 and 5328-2, General Code, the Ohio Supreme Court said: "Taking into account the cited statutes, together with the stipulation of facts, support is given the determination of the Board of Tax Appeals that the accounts receivable and the avails thereof, that is, the proceeds realized from their collection, are attributable to the district offices outside of Ohio, and are used by such offices in the conduct of their respective activities." *Proctor and Gamble Company v. Evatt*,\* Ohio Supreme Court, December 22, 1943. Commerce Clearing House Court Decisions Requisition No. 314080; 52 N. E. 2d 519. Dinsmore, Shohl, Sawyer & Dinsmore; Dargusch, Caren, Greek & King; and Richard W. Barrett, for appellee. Thomas J. Herbert, Attorney General, and Perry L. Graham, for appellant.

\* The full text of this opinion is printed in *The Corporation Tax Service*, Ohio, page 2714.



## Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.\*

ARKANSAS. Docket No. 311. *McLeod, Commissioner of Revenues v. J. E. Diltworth Company et al.*, 171 S. W. 2d 62. (The Corporation Journal, October, 1943, page 16.) Gross receipts tax—solicitation by traveling representatives, followed by shipment into state in interstate commerce. Petition for writ of certiorari filed, August 31, 1943. Certiorari granted, October 25, 1943.

INDIANA. Docket No. 355. *Department of Treasury of Indiana et al. v. International Harvester Co. et al.*, 47 N. E. 2d 150. (The Corporation Journal, June, 1943, page 423.) Gross income tax—sales effected by branch offices outside Indiana to dealers and users located in Indiana. Appeal filed, September 15, 1943. Probable jurisdiction noted, October 25, 1943.

IOWA. Docket No. 441. *State Tax Commission v. General Trading Company*, 10 N. W. 2d 659. (The Corporation Journal, October, 1943, page 18.) Liability of unlicensed foreign corporation to collection of Iowa use tax on orders solicited by traveling salesmen in state, approved in another state, from which goods were shipped in interstate commerce into Iowa. Petition for certiorari filed, October 19, 1943. Certiorari granted, November 22, 1943. Argued, February 4, 1944.

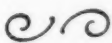
KENTUCKY. Docket No. 154. *Anderson National Bank et al. v. Reeves*, 170 S. W. 2d 370, 575. (The Corporation Journal, October, 1943, page 9.) Validity of Kentucky Escheat Act of 1940. Appeal filed, July 12, 1943. Jurisdiction noted, October 11, 1943. Argued, February 2, 1944.

MINNESOTA. Docket No. 33. *Northwest Airlines, Inc. v. State of Minnesota*, 7 N. W. 2d 691. (The Corporation Journal, March, 1943, page 351.) State taxation—assessment of Minnesota personal property tax against entire fleet of airplanes operated by Minnesota corporation in interstate commerce. Petition for certiorari filed, April 2, 1943. Certiorari granted, May 10, 1943. Argued, October 19 and 20, 1943.

MINNESOTA. Docket No. 291. *Union Brokerage Co. v. Jensen et al.*, 9 N. W. 2d 721. (The Corporation Journal, October, 1943, page 14.) Unlicensed foreign customhouse brokerage corporation—doing business—right to sue. Petition for certiorari filed, August 26, 1943. Certiorari granted, October 11, 1943. Argued, February 1, 1944.

WISCONSIN. Docket No. 565. *Wisconsin Gas and Electric Company v. The United States of America*, 138 F. 2d 597. (The Corporation Journal, January, 1944, page 88.) Federal income tax—right of public utility corporation to deduct privilege dividend tax paid to the State of Wisconsin. Appeal filed, December 30, 1943. Certiorari granted, January 31, 1944.

\* Data compiled from CCH U. S. Supreme Court Service, 1943-1944.





## The Corporation Journal

### Regulations and Rulings

**COLORADO**—If a foreign insurance company does not renew its charter within the one year period of limitation, it ceases to have a corporate existence in Colorado. If it wishes to be authorized to do business again in the state, it must qualify as, and pay the fees charged a new corporation, as well as pay the fees applicable to insurance companies. (Opinion, Attorney General to Commissioner of Insurance, Colorado CT (Corporation Tax) Service, ¶ 404.)

**MARYLAND**—If the Federal income tax payable by any taxpayer subject to the jurisdiction of the State of Maryland is increased by an authorized department or agency of the Federal Government, or any change or changes are required by any such department or agency in the method of reporting income on the Federal income tax return of any such taxpayer, detailed information setting forth the amount of and reason for the tax increase or the nature of such change or changes must be submitted to the comptroller within thirty (30) days after knowledge thereof is acquired by the taxpayer. (Regulation No. 9, Maryland CT, ¶ 12-301.)

The 33 $\frac{1}{3}$ % reduction in the liability for income taxes was increased to 50% in the case of *taxpayers other than corporations* with respect to income of 1943 or of the first fiscal year ending after December 31, 1943, pursuant to a resolution of the Maryland Board of Public Works acting upon the authority of Chapter 709, Laws of 1943. Correspondingly, the 2% withholding rate imposed with respect to nonresidents was reduced to 1%. (Maryland CT, ¶¶ 10-902.015, 14-203.005.)

**MONTANA**—Income of manufacturing and mercantile corporations is apportioned to Montana on the basis of sales, payroll and tangible property within and without the state, after separately allocating income from interest, dividends, royalties and capital gains. Separate accounting ordinarily is used in the case of personal finance, advertising, brokerage, contracting and like corporations. (Letter of Corporation License Tax Auditor, Montana CT, ¶ 14-502.)

**NORTH CAROLINA**—The Chief of the Sales and Use Tax Division, in a notice issued recently, stated that if a taxpayer has filed on time his July, 1943, sales and use tax return or has filed on time any such return due thereafter and has actually paid the tax due on each such return but has failed to take the 3% discount he may take such discount on a future report. It is suggested, however, that if he has failed to claim this discount, that he make such claim on his next monthly report. This is a reversal of the stand taken in a previous notice wherein it was announced that if the discount were not taken at the time of filing the return it was lost. (North Carolina CT Report No. 168.)

**VERMONT**—The Commissioner of Taxes has indicated that, for income tax purposes, the income of foreign corporations is generally allocated on one, two or three bases, using assets, manufacturing, sometimes labor, and sales. Each individual case is determined according to the activity of the corporation, with income of sales, construction and service corporations usually being allocated on the sale basis. (Vermont CT, ¶ 1526.)

## Some Important Matters for March and April

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

**ALABAMA**—Annual Franchise Tax Return due between January 1 and March 15.—Domestic and Foreign Corporations.

Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Franchise Tax due April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

**ARIZONA**—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Statement of Mining Companies due between January 1 and April 1.—Domestic and Foreign Corporations engaged in mining of any kind.

**CALIFORNIA**—Franchise (Income) Tax Return and Payment of one-half of tax due on or before March 15.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

**COLORADO**—Annual Report due on or before March 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Annual License Tax due on or before May 1.—Domestic and Foreign Corporations.

**CONNECTICUT**—Income Tax Return due on or before April 1.—Domestic and Foreign Corporations.

**DELAWARE**—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations making certain payments of dividends, interest or other income to citizens or residents of Delaware during 1943.

Returns of withholding at the source due on or before April 30.—Domestic and Foreign Corporations making payments for personal services to residents and non-residents of Delaware.

Annual Franchise Tax due after April 1 and before July 1.—Domestic Corporations.

**DISTRICT OF COLUMBIA**—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

GEORGIA—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Intangible Property Tax Return due on or before March 15.—Domestic and Foreign Corporations.

IDAHO—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

INDIANA—Quarterly Gross Income Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

IOWA—Income Tax Return and Returns of Information at the source due on or before March 31.—Domestic and Foreign Corporations.

Return of Taxes withheld at the source due on or before March 31.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

KANSAS—Annual Report and Franchise Tax due on or before March 31.—Domestic and Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

KENTUCKY—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Income Tax and Corporation License Tax Return due on or before April 15.—Domestic and Foreign Corporations.

MARYLAND—Annual Report (Personal Property Return) due on or before April 15.—Domestic Corporations.

Franchise Tax Report and Franchise Tax due on or before April 15.—Domestic Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Annual Report (Personal Property Return) and Filing Fee due on or before April 15.—Foreign Corporations.

MASSACHUSETTS—Excise Tax Return due on or before April 10.—Domestic and Foreign Corporations.

MICHIGAN—Intangible Personal Property Tax Return due on or before April 1.—Domestic and Foreign Corporations.

MINNESOTA—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Foreign Corporations.

Returns of Withholding at the source due on or before April 15.—Domestic and Foreign Corporations.

MISSISSIPPI—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

MISSOURI—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

MONTANA—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Statement due within two months from April 1.—Foreign Corporations.

- NEBRASKA—Statement to Tax Commissioner due on or before April 15.—Foreign Corporations.
- NEVADA—Annual Statement of Business due not later than month of March.—Foreign Corporations.
- NEW HAMPSHIRE—Annual Return due on or before April 1.—Domestic and Foreign Corporations.  
Franchise Tax due April 1.—Domestic Corporations.
- NEW MEXICO—Franchise Tax Return due on or before March 15.—Domestic and Foreign Corporations.  
Returns of Information at the source due on or before April 1.—Domestic and Foreign Corporations.  
Income Tax Returns due on or before April 15.—Domestic and Foreign Corporations.  
Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.
- NEW YORK—Annual Franchise (Income) Tax Return (Form 3 IT.—Article 9A, Tax Law), due on or before May 15, together with one-half of tax.—Domestic and Foreign Business Corporations.
- NORTH CAROLINA—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.  
Intangible Property Tax Return due on or before March 15.—Domestic and Foreign Corporations.
- NORTH DAKOTA—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.  
Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.  
Annual Report due between January 1 and April 1.—Foreign Corporations.
- OHIO—Annual Franchise Tax Report due between January 1 and March 31.—Domestic and Foreign Corporations.  
Annual Statement of Proportion of Capital Stock due between January 1 and March 31.—Foreign Corporations.
- OKLAHOMA—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.
- OREGON—Excise (Income) Tax Return due on or before April 1.—Domestic and Foreign Corporations.
- PENNSYLVANIA—Capital Stock Tax Report and Tax and Corporate Loans Report and Tax due on or before March 15.—Domestic Corporations.  
Franchise Tax Report and Tax and Corporate Loans Tax Report and Tax due on or before March 15.—Foreign Corporations.  
Bonus Tax Report due on or before March 15.—Domestic Corporations.  
Bonus Tax Report due on or before March 15.—Foreign Corporations.  
Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

- RHODE ISLAND**—Semi-Annual Report to Division of Industrial Inspection due in April and October.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.
- SOUTH CAROLINA**—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.  
Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.
- TEXAS**—Annual Franchise Tax Report due between January 1 and March 15.—Domestic and Foreign Corporations.  
Annual Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.
- UNITED STATES**—Income and Excess-Profits Tax Return due on or before March 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.
- UTAH**—Income (Franchise) Tax Return due on or before March 15.—Domestic and Foreign Corporations.
- VERMONT**—Extension of Certificate of Authority due on or before April 1.—Foreign Corporations.  
Income (Franchise) Tax Return due on or before March 15.—Domestic and Foreign Corporations.
- VIRGINIA**—Income Tax Return and Returns of Information at the source due on or before April 15.—Domestic and Foreign Corporations.
- WEST VIRGINIA**—Annual License Tax Report due in April.—Foreign Corporations.  
Quarterly Business and Occupation (Gross Sales) Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.
- WISCONSIN**—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.  
Annual Report due between January 1 and April 1.—Domestic and Foreign Corporations.



# The Corporation Trust Company's Supplementary Literature

*In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, 5, N. Y.*

**What Constitutes Doing Business.** (Revised to October 1, 1943.) A 181-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

**Cross Hauling . . . and the Answer, Spot Stocks.** Explains how the possible wartime restrictions on cross-hauling point the way to volunteer peacetime economies through the keeping of warehouse stocks at strategic shipping points.

**Amendments to Delaware Corporation Law, 1943.** Contains complete text of the amendments adopted at the 1943 session of the legislature, giving for each one a brief explanation of its purpose and effect.

**Contracts You Can't Enforce.** Interesting case-histories which show advisability of contractor getting lawyer's advice before undertaking construction work outside his home state, even for federal government.

**After the Agent for Service Is Gone.** What will happen *then* if suit is brought against the company? Some examples taken from actual court cases, with full texts of the final decisions.

**Delaware Corporations.** Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

**Spot Stocks—and Interstate Commerce.** Treats, in a general and informal way, of the relation between the carrying of goods in warehouses in outside states and the statutory obligations which that activity, in some states, places on the corporation owning the goods.

**When a Corporation Leaves Home.** A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

**We've Always Got Along This Way.** A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves in trouble.

**What! We Need a Transfer Agent? Nonsense!** The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent.

**Judgment by Default.** Gives the gist of *Rarden v. Baker* and similar cases, showing how corporations qualified as foreign in any states and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

**THE CORPORATION TRUST COMPANY**

120 BROADWAY, NEW YORK 1, N. Y.

Sec. 562, D. L. &amp; E.

U. S. Postage

**PAID**

Chicago, Illinois

Permit No. 2200

POSTMASTER—If undeliverable For ANY REASON, notify sender, stating reason (and new address, if known, if addressee has moved) on **FORM 3547** postage for which is guaranteed.

## THE CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost (\$1.50).



6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100